

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAURENCE DUANE LANG, No C-09-3020 VRW (PR)  
Petitioner,  
v ORDER TO SHOW CAUSE  
BEN CURRY Warden,  
Respondent.

Petitioner, a state prisoner incarcerated at the  
Correctional Training Facility in Soledad, California, has filed a  
pro se petition for a writ of habeas corpus under 28 USC § 2254  
challenging the September 22, 2006 decision of the Governor of the  
State of California to revoke a parole date granted him by the  
California Board of Prison Hearings ("BPH"). Petitioner has paid  
the \$5.00 filing fee.

26 I  
27 Petitioner was convicted by a jury in Los Angeles County  
28 superior court of second degree murder, attempted robbery and

1 assault with a deadly weapon. Doc #1 at 2 & 22. In April 1981, he  
2 was sentenced to an indeterminate term of 15 years to life in state  
3 prison plus a determinate term of five years and eight months. Id  
4 at 22.

5 On May 1, 2006, BPH held a tenth parole suitability  
6 hearing, found petitioner suitable for parole and set a parole date;  
7 however, the governor reversed BPH's parole suitability  
8 determination and revoked the parole date. Doc #1-1 at 1-2.

9 Petitioner has unsuccessfully challenged the governor's  
10 decision in the state courts. Doc #1-1 at 18-26. On June 24, 2009,  
11 the Supreme Court of California denied his petition for writ of  
12 habeas corpus. Id at 18.

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14 II

15 This court may entertain a petition for a writ of habeas  
16 corpus "in behalf of a person in custody pursuant to the judgment of  
17 a State court only on the ground that he is in custody in violation  
18 of the Constitution or laws or treaties of the United States." 28  
19 USC § 2254(a). It shall "award the writ or issue an order directing  
20 the respondent to show cause why the writ should not be granted,  
21 unless it appears from the application that the applicant or person  
22 detained is not entitled thereto." Id § 2243.

23 Petitioner seeks federal habeas corpus relief from the  
24 decision of the governor to revoke a parole date granted him by BPH.  
25 Among other things, petitioner claims that the governor's decision  
26 is not supported by the evidence. Liberally construed, petitioner's  
27 claims appear colorable under § 2254 and merit an answer from  
28

1 respondent. See McQuillion v Duncan, 306 F3d 895, 902-03 (9th Cir  
2 2002) (decision to rescind previously-granted parole release date  
3 implicated prisoner's liberty interest in release on parole, which  
4 cannot be denied without adequate procedural due process  
5 protections); see also Biggs v Terhune, 334 F3d 910, 914-15 (9th Cir  
6 2003) (finding that initial refusal to set parole date for prisoner  
7 with 15-to-life sentence implicated prisoner's liberty interest in  
8 release on parole which cannot be denied without adequate procedural  
9 due process protections).

10  
11 III

12 For the foregoing reasons and for good cause shown,

13 1. The clerk shall serve by certified mail a copy of  
14 this order and the petition and all attachments thereto on  
15 respondent and respondent's attorney, the Attorney General of the  
16 State of California. The clerk also shall serve a copy of this  
17 order on petitioner.

18 2. Respondent shall file with the court and serve on  
19 petitioner, within 60 days of the issuance of this order, an answer  
20 conforming in all respects to Rule 5 of the Rules Governing Section  
21 2254 Cases, showing cause why a writ of habeas corpus should not be  
22 granted. Respondent shall file with the answer and serve on  
23 petitioner a copy of all portions of the state trial record that  
24 have been transcribed previously and that are relevant to a  
25 determination of the issues presented by the petition.

26 If petitioner wishes to respond to the answer, he shall do  
27 so by filing a traverse with the court and serving it on respondent

1       within 30 days of his receipt of the answer.

2                 3. In lieu of an answer, respondent may file a motion to  
3 dismiss on procedural grounds, as set forth in the Advisory  
4 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
5 If respondent files such a motion, petitioner shall file with the  
6 court and serve on respondent an opposition or statement of  
7 non-opposition within 30 days of receipt of the motion, and  
8 respondent shall file with the court and serve on petitioner a reply  
9 within 15 days of receipt of any opposition.

10               4. Petitioner is reminded that all communications with  
11 the court must be served on respondent by mailing a true copy of the  
12 document to respondent's counsel. Petitioner must also keep the  
13 court and all parties informed of any change of address.

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15               IT IS SO ORDERED.

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18               VAUGHN R WALKER  
19               United States District Chief Judge  
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